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IN THE

Supreme Court of the United States

Case No. 72-449

CAPITAL TILE AND MARBLE COMPANY, INC.

and

THE HOME INDEMNITY COMPANY,

Petitioners,

v.

WILLIAM E. DEESE,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the District of Columbia

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

I. DECISIONS BELOW

Respondent respectfully submits that the decisions below are adequately set forth in the Petition.

II. JURISDICTION

Respondent respectfully submits that the jurisdictional requisites are adequately set forth in the Petition.

III. QUESTIONS PRESENTED

A. WHETHER THE EXTRATERRITORIAL PROVISIONS OF THE DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION LAW ESTABLISH THAT THE DISTRICT COURT HAD JURSIDICTION TO HEAR AND DECIDE THE APPEAL FROM THE COMPENSATION ORDER.

B. THE EVIDENCE DEMONSTRATES THAT SUBSTANTIAL CONNECTIONS EXISTED BETWEEN THE EMPLOYEE-EMPLOYER RELATIONSHIP AND THE DISTRICT OF COLUMBIA SO AS TO SUPPORT THE FINDING OF THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA THAT THE DEPUTY COMMISSIONER HAD JURISDICTION OVER THE CLAIM.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES

Respondent respectfully submits that the statutes and constitutional provisions involved are adequately set forth in the Petition.

V. STATEMENT OF THE CASE

On April 20, 1966, William E. Deese, hereinafter referred to as the Employee, was working as a tile mechanic for Capitol Tile and Marble, Inc., hereinafter referred to as Employer. On the aforementioned date, the Employee suffered an injury to his knee at a jobsite at the University of Maryland.

Following this injury, the Employee filed a claim for compensation in the District of Columbia pursuant to the

provisions of the Longshoremen's and Harborworker's Compensation Act, as amended 33 U.S.C. 901 *et seq.*, as made applicable to the District of Columbia by D.C. Code 36-501. A hearing was held on this claim on October 21, 1969. At that hearing, the Employee testified that he performed approximately thirty per cent of his work in the District of Columbia and that he was subject to being assigned to jobs in the District at the discretion of the Employer. Additionally, the Employee stated that he was a member of Local No. 3 of the Terrazo Workers and Tile Setters Union, whose union hall is located in the District.

Further testimony at this hearing revealed that the Employer was licensed to do business in the District of Columbia, did in fact conduct business in the District of Columbia, and also paid a substantial amount in taxes to the District. During the year preceding the injury, (March, 1967 - March, 1968) the Employer had paid out approximately $17,500 in salaries to various employees working in the District of Columbia. At the time of the accident giving rise to the injury four of the seven projects that the Employer was engaged in were located in the District of Columbia. One of these four projects was at St. Elizabeth's Hospital, where the employee had worked on the morning of the same day on which he was injured. It was further stated that when the Employee worked on projects in the District, his salary check was brought to him at the job site.

On the basis of this record, the Deputy Commissioner entered a compensation order on December 8, 1969, stating that the claim did not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

The Employee appealed this decision to the United States District Court for the District of Columbia. Subsequently,

the Employee's motion for summary judgement was granted and the finding by the Deputy Commissioner that there was not jurisdiction for the claim was reversed.

On February 2, 1971, the Employer filed a Motion to Vacate this judgement and to Dismiss the Case, based on the contention that the appeal from the compensation order should have been taken in the judicial district in which the injury occurred. This Motion was denied on February 17, 1971.

The Employer thereupon noted an appeal from both Orders of the District Court, and both appeals were consolidated in the United States Court of Appeals for the District of Columbia. On June 19, 1972, the Court of Appeals affirmed the decision of the District Court.

VI. ARGUMENT

A. THE EXTRATERRITORIAL PROVISIONS OF THE DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION LAW ESTABLISH THAT THE DISTRICT COURT HAD JURISDICTION TO HEAR AND DECIDE THE APPEAL FROM THE COMPENSATION ORDER.

The proper procedure for obtaining judicial review of compensation orders is to be found in Section 21(b) of the Longshoremen's and Harborworker's Compensation Act, 33 U.S.C. 921(b), pertinent parts of which read as follows:

> "(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought

> by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court in which the injury occurred (or in the United States District Court for the District of Columbia if the accident occurred in the District) . . ."

This section, however, when applied to situations involving the District of Columbia, must be read in conjunction with the District of Columbia Workmen's Compensation Law, D.C. Code 36-501, which states:

> "The provisions of the Longshoremen's and Harborworker's Compensation Act, including all amendments . . . shall apply in respect to the injury or death of an employee of an *employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs;* except that in applying such provisions the term 'employer' shall be held to mean *every* person carrying on *any* employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person." (Emphasis supplied)

The combined effect of these two statutes has been to vest jurisdiction in the District Court for the District of Columbia when an employee of an employer who carries on any employment in the District of Columbia is injured while working in another jurisdiction. This extraterritorial application of the law is permissible when " . . . [there exists] some substantial connection between the District and the particular employee-employer relationship . . . " *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469,

476 (1947). Once these connections are established, the fact that the accident occurred in another jurisdiction is immaterial inasmuch as the words of the Act leave no room for implying an exception excluding employees who have substantial business and personal connections in the District, but who are injured outside its borders. *Cardillo v. Liberty Mutual Insurance Co., supra,* at 475.

The extraterritorial application of the District of Columbia Workmen's Compensation Act has been sustained by the Courts on numerous occasions. *Cardillo v. Liberty Mutual Insurance Company, supra; United States Fidelity and Guaranty Company v. Donovan,* 94 U.S. App. D.C. 377, 221 F.2d 515 (1954); *Travelers Insurance Company v. Cardillo,* 78 App. D.C. 392, 141 F.2d 362 (1944); *Travelers Insurance Company v. Cardillo,* 78 App. D.C. 394, 141 F.2d 364 (1944); *Moyer v. Cardillo,* 73 App. D.C. 261, 119 F.2d 785 (1941). The cumulative effect of these decisions has been to equate an injury which occurs outside the District under the above conditions with an injury which occurs in the District.

In his Order denying Petitioner's Motion to Vacate Judgment and Dismiss the Case, Judge Gasch succinctly summed up one of the reasons which led to his decision:

> ". . . This Court finds that, in view of (the) numerous decisions in the United States Court of Appeals for the District of Columbia and also in the Supreme Court of the United States, jurisdiction is properly vested in the District Court for the District of Columbia. To hold otherwise would be to deny a forum to those employees covered by the D.C. Workmen's Compensation Act who are injured

> outside the United States . . . This decision is in part motivated by the unique position of the District of Columbia and the extraterritorial provisions of its Workmen's Compensation Act." (Petitioner's Appendix, 3a).

Petitioner's reliance on *Continental Fire and Casualty Insurance Company v. O'Leary*, 236 F.2d 282 (9 Cir. 1956) and *Bassett v. Massman Construction Company*, 120 F.2d 230 (8 Cir. 1941) is entirely misplaced. In the former case, the issue was not the extraterritorial effect of the Act, but rather, whether or not Alaska, not yet a state, qualified as a "judicial district" within the meaning of 33 U.S.C. 921(b). In the latter case, the issue involved the question of which of two judicial districts would have jurisdiction over an injury which occurred in middle of the Mississippi River. Clearly, these two cases are readily distinguishable from the case at hand. In neither case was there involved any statute comparable to D.C. Code 36-501. As such, it becomes apparent that there is *no* conflict between the Eighth and Ninth Circuit and the District of Columbia Circuit as the Petitioners claim.

B. THE EVIDENCE DEMONSTRATES THAT SUBSTANTIAL CONNECTIONS EXISTED BETWEEN THE EMPLOYEE-EMPLOYER RELATIONSHIP AND THE DISTRICT OF COLUMBIA SO AS TO SUPPORT THE FINDING OF THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA THAT THE DEPUTY COMMISSIONER HAD JURISDICTION OVER THE CLAIM.

As noted in the preceding section, the District of Columbia Workmen's Compensation Law applies to employees of "every employer carrying on any employment in the

District of Columbia." D.C. Code 36-501. As with other sections of the Act, this section was intended by Congress to be liberally construed by the Courts. *Standard Accident Insurance Company v. Hoage*, 62 App. D.C. 245, 66 F.2d 275 (1933). The most notable interpretation of this section is found in *Cardillo v. Liberty Mutual Insurance Company*, 330 U.S. 469 (1947). In that case, the Supreme Court stated that the Deputy Commissioner would have jurisdiction to consider a claim when it is determined that

> "[there is] some substantial connection between the District and the particular employee-employer relationship . . ." 330 U.S. at 476.

At the same time the Court noted:

> "Whether this language covers employees who are more *remotely related* to the District is a matter which we need not discuss and any arguments based upon such hypothetical situations are without weight in this case." 330 U.S. at 475-476 (Emphasis supplied).

Petitioner contends that this case presents for resolution questions left open by the Court in the *Cardillo* case, *supra*. However, upon examination of the facts of the instant case, it becomes apparent that Capitol Tile and Marble, Inc., was an employer "carrying on . . . business in the District of Columbia" at the time of the injury to the Respondent, that there were "substantial connections" between the Petitioner, his employer and the District of Columbia, and that the employee-employer relationship with the District could in no manner be classified as "remote".

Capitol Tile and Marble, Inc. is licensed to do business in the District of Columbia and, in fact, performs a substantial proportion of its work in the District. This pattern is not occasional but rather is one that is continuous in nature. The company has projected itself into the economic life of the District in a very substantive manner. This latter point is exemplified by the fact that at the time of the injury to the appellee, four of Capitol Tile and Marble's seven projects were located in the District of Columbia. During the year which preceded the injury, the employer paid out a considerable sum of money for labor performed by its employees on jobs located in the District. Additionally, the company paid a variety of taxes imposed by the District of Columbia in connection with the firm's operations.

The Respondent in this case, a member of Local No. 3 of the Terrazo Workers and Tile Setters Union in the District, had been employed by Capitol Tile and Marble for approximately a year and a half at the time he was injured. During the year immediately preceding the accident, he earned a substantial proportion of his wages from work he performed in the District. His salary checks for this work were delivered to him at jobsites in the District. Under the terms of his employment, he was subject to being sent into the District at any time by his employer. In fact, on the day of his injury, Respondent spent the morning working on a project then in progress at St. Elizabeth's Hospital.

In light of this rather lengthy recitation of "substantial connections" between the employer, the employee and the District, there can be no question that Capitol Tile and Marble was an "employer" within the meaning of the District of Columbia Workmen's Compensation Act

and, therefore, both it and its employee come within the ambit of the Act. Consequently, it can be seen that the Deputy Commissioner has jurisdiction to consider the claim.

Respondent's situation is by no means unique. Over the years, the Courts of the District of Columbia have had occasion to decide numerous cases involving claimants who were injured while working outside the District. See *Amalgamated Association v. Adler*, 119 U.S. App. D.C. 274, 340 F.2d 799 (1964); *United States Fidelity and Guaranty Company v. Donovan, supra; Travelers Insurance Company v. Cardillo, supra; Travelers Insurance Company v. Cardillo; Moyer v. Cardillo, supra.*

In *Moyer v. Cardillo, supra*, the claimant, a Maryland resident, was injured in Maryland while on the premises of his employer. The employer carried on the majority of his business in Maryland but performed some work in the District of Columbia at the time of the accident. The Deputy Commissioner rejected the employee's claim for lack of jurisdiction, but this finding subsequently was reversed by the Court of Appeals. In its opinion, the Court stated that the fact that business was being carried on in the District by the employer was sufficient to entitle the employee to compensation even though he was injured in Maryland.

Other jurisdictions, such as New York, having similar compensation statutes often have applied them in cases in which the claimant, although injured in another state, had sufficient contacts with the state in which the claim was filed so as to bring him within the ambit of the state act. See *Commission of Taxation and Finance v. Fiberdine Distributors, Inc.*, 25 A.D. 2d 898, 269 N.Y.S. 2d 205 (1966);

McMains v. Trans World Airlines, Inc., 18 A.D. 2d 956, 237 N.Y.S. 2d 812 (1963); *Armstrong v. Aero Mayflower Transit Co.*, 14 A.D. 2d 958, 221 N.Y.S. 2d 225 (1961).

It should be noted that the cases of *Pacific Employer's Insurance Company v. Industrial Accident Commission*, 306 U.S. 493 (1939) and *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532 (1935), upon which Petitioners rely, are inapposite in this instance. In the first place, neither case deals with a situation arising under the Longshoremen's and Harborworker's Compensation Act. Even more importantly, the requirements of due process and full faith and credit raised in the above cases are clearly met here. The District of Columbia had a legitimate interest in the regulation of this employee-employer relationship because of the substantial connections herein demonstrated between this particular employee-employer relationship and the District. In such a case, the D.C. Workmen's Compensation Law can in no conceivable manner be said to constitute an arbitrary or unreasonable exercise of power. Quite the contrary, for where such substantial connections are found the Law has been held to fully satisfy any and all claims of full faith and credit or due process. *Cardillo v. Liberty Mutual Insurance Company, supra*, at 476.

In addition to the foregoing points, it can be seen that the District of Columbia is in a unique position. The physical boundaries of the District are of less importance than those of other jurisdictions. The flow of traffic and business between it and the contiguous metropolitan area is ever on the increase. Workers based in this area often travel between the various jurisdictions several times per day. Thus, the precise location of an accident is of little consequence if the worker has ties with the District. It

was for these reasons that Congress enacted the extraterritorial provisions of the District of Columbia Workmen's Compensation Act which should be applied in the instant case.

The present case does not present an instance where those issues left open in the *Cardillo* case, *supra*, need be decided. On the facts, this is not a case where the District of Columbia Workmen's Compensation Law is applied to an employer or employee "remotely related" to the District. Rather, the requisite "substantial connections" are readily apparent, bringing the instant case clearly within the scope of *Cardillo* decision, *supra*, and rendering further judicial consideration of this matter unnecessary.

VII. CONCLUSION

For the foregoing reasons the Respondent respectfully submits that the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit be denied.

Respectfully submitted,

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